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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of
Leon W.M.M. Terstappen et al.,
Serial No. 09/801,471
Filed: March 7, 2001

Group Art Unit: 1642
Examiner: Karen A. Canella,
Ph.D.
Request for Reconsideration on
Finality of the Office Action

For: LABELED CELLS FOR USE AS AN
INTERNAL FUNCTIONAL CONTROL
IN RARE CELL DETECTION
ASSAYS

REQUEST FOR RECONSIDERATION ON FINALITY OF OFFICE ACTION

This is a request for reconsideration and withdrawal of the Final rejection issued by the examiner in the above-captioned application. This request is submitted without prejudice to applicants' right to appeal the Final rejection, or any other rights of applicants with respect to this application and the claimed subject matter. However, it is respectfully requested, prior to applicants taking such appeal or other appropriate action and in order to advance prosecution of this application, that the examiner considers the following remarks.

The February 27, 2003 Office Action issued by the examiner, in response to an amendment of the application by applicants, included a Final rejection in the above-captioned application according to MPEP §706.07(a). The examiner asserted that applicants' amendment necessitated new grounds of rejection following applicants' amendments to claims 1, 7, 9, 10, 16, 22, 23, 28, 35, 41, 42, 47, 50 and 54. Based upon these amendments, the examiner responded with items 13, 14, 15, 16, 17, 18, 19 as

1 rejections under 35 U.S.C. 103(a) and included new, additional
2 references: Labalette-Houache et al (Journal of Immunological
3 Methods, 1991, Vol. 138, pp. 143-153), Decaestecker et al
4 (Journal of Immunological Methods, 1992, Vol. 154, pp. 11-20)
5 and Yang et al (Journal of Immunological Methods, 1994, Vol.
6 172, pp. 77-84).

7 It is urged by applicants that amended claims 7-9 do not
8 incorporate new matter. Amended claim 7 is a correction to
9 include the proper punctuation for independent claims, and
10 amended claim 9 changes the word "dye" to "labeling".

11 Consequently, the new rejections with the new references were
12 directed to the original subject matter, which has not been
13 changed by the applicant, and thus it is asserted that such
14 rejections cannot properly be made final.

15 Accordingly, applicants respectfully request
16 reconsideration and withdrawal of the finality of the Office
17 Action, in view of the above remarks and MPEP §706.07(d).
18 Additionally, the examiner is invited to telephone applicants'
19 representative at the number below to discuss any other issues.

20 Respectfully submitted,

21 By Joseph F. Aceto
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25 April 7, 2003